DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference for InterLATA 0+ Calls	)	CC Docket No. 92-77
	)	
	)	

JOINT COMMENTS OF CLEARTEL COMMUNICATIONS, INC. AND CONQUEST OPERATOR SERVICES CORP.

Glenn B. Manishin
Michael D. Specht, Senior Engineer
Blumenfeld & Cohen - Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
202.955.6300
202.955.6460 fax

Counsel for Cleartel Communications, Inc. and ConQuest Operator Services Corp.

Dated: July 17, 1996

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference for InterLATA 0+ Calls	)	CC Docket No. 92-77
	)	
	)	

JOINT COMMENTS OF CLEARTEL COMMUNICATIONS, INC.
AND CONQUEST OPERATOR SERVICES CORP.

Cleartel Communications, Inc. and ConQuest Operator Services Corp. ("Cleartel/ConQuest"), by their attorneys, respectfully submit these joint comments on the Second Further Notice of Proposed Rulemaking ("NPRM")[1] released by the Federal Communications Commission ("Commission") in the captioned proceeding.

INTRODUCTION AND SUMMARY

After several years of consideration, the NPRM proposes that the Commission abandon, at least for the immediate future, its tentative May 1994 conclusion that Billed Party Preference ("BPP") is in the public interest. NPRM ¶¶ 2-4. This conclusion is manifestly correct, particularly in light of the widespread opposition to BPP across all segments of the industry, including local exchange carriers, interexchange carriers and operator service providers ("OSPs").[2]

---

[1] *Billed Party Preference for InterLATA 0+ Calls*, Second Further Notice of Proposed Rulemaking, FCC 96-253, CC Docket No. 92-77 (released June 6, 1996)("NPRM").

[2] The NPRM indicates that the Commission "intend[s] to give further consideration to BPP as local number portability develops," NPRM ¶ 4 & n.8, suggesting that the extreme costs of BPP may be lower once local number portability ("LNP") databases are deployed ubiquitously. Whether or not the Commission's cost assumption is true obviously remains to be seen. In the interim, however, the Commission should terminate the BPP docket, because by the time LNP is available, the cost record in this proceeding will be too stale to support any valid public policy determinations.

The NPRM proposes as an alternative to BPP that OSPs be required to disclose the price for calls (or a representative call) before completing a call, and that OSPs whose rates exceed a "benchmark" of the average rates charged by the largest OSPs (AT&T, MCI and Sprint) plus "an additional price margin" (such as 15%) be required to "inform consumers of the total charge for which they would be liable for the initial rate period and each subsequent rate period." NPRM ¶¶ 35-36. Implicitly rejecting a March 1995 proposal by the Competitive Telecommunications Association and others (the "CompTel Coalition") for a "safe harbor" rate ceiling,[3] the Commission instead finds that a rate benchmark should be based on what the NPRM terms "the reasonable expectations of consumers." *Id.* ¶ 23.

As smaller OSPs, using predominantly resold facilities, Cleartel/ConQuest believe that the Commission must strive to fashion a price disclosure requirement that allows pricing flexibility for carriers without misleading consumers. There is a serious question whether the Commission's assumption—that some consumers find "dialing around" the presubscribed OSP to be "burdensome and confusing"[4]—justifies additional OSP disclosure requirements. Even assuming regulatory intervention is warranted, the Commission's tentative conclusions inappropriately reject the reasonable rate ceilings proposed by the CompTel Coalition. Any "standard" disclosure that only applies to the smaller OSPs—and not to the three largest carriers—would also be arbitrary and discriminatory. Cleartel/ConQuest therefore urge that, if a rate benchmark plan is adopted, the Commission utilize the CompTel Coalition

---

[3] NPRM ¶ 11.
[4] NPRM ¶ 7.

proposed "safe harbor" and require a uniform, informative and carrier-neutral announcement for *all* OSPs exceeding the rate benchmark.

DISCUSSION

I. THERE IS NO CONSUMER PROTECTION NEED TO SET BENCHMARK RATES AND ESTABLISH ADDITIONAL OSP DISCLOSURE REGULATIONS

Both prior to, and in implementation of, the Telephone Operator Consumer Services Improvements Act of 1990 ("TOCSIA"), 47 U.S.C. § 226, the Commission has required unblocking of access to all OSPs from payphones and other aggregator locations, and identification of OSPs (*i.e.*, "branding") prior to the commencement of billing. These requirements were designed to provide transient callers with their choice of carrier and with advance notice that the presubscribed OSP serving an aggregator location may not be the end user's preferred carrier. Nonetheless, the NPRM suggests that additional measures are needed because "the large number of complaints received by the Commission and state regulators suggests that [these requirements] are inadequate notice to prevent consumer surprise and dissatisfaction for a substantial number of calls."[5]

The limited number of consumer complaints actually received by the Commission does not justify establishing excessive new regulations that burden OSPs and consumers alike, particularly in light of the many competitive alternatives available to consumers for placing telephone calls from aggregator locations. In the Telecommunications Act of 1996, Congress clearly expressed its intent to create a national policy framework for telecommunications that is "pro-competitive," "de-

[5] NPRM ¶ 8.

regulatory" and beneficial to American consumers.[6] While this proceeding was opened prior to the 1996 Act and does not fulfill specific FCC obligations under the Act, it should nonetheless be consistent with Congressional intent for telecommunications policy in the United States. By proposing excessive regulations based on the rates of the three largest carriers that impose burdensome and misleading requirements on OSPs and consumers alike—while providing limited, if any, consumer benefits—the NPRM is inconsistent with Congressional intent.

Consumer complaints about OSP rates do not, of themselves, justify additional disclosure requirements. As an initial matter, the absolute number of complaints received is an exceedingly small proportion of calls placed with OSPs. While the Commission notes that it received 5,140 complaints regarding OSP calls in a recent 13-month period,[7] during that same period it is likely that more than 10 million OSP calls were placed by consumers *who had no complaints*. This tiny fraction (0.0005) of complaints simply does not justify excessive regulations that burden the entire industry, including carriers like Cleartel/ConQuest that do not receive a substantial volume of rate-related complaints, and impose cost, delay and inconvenience for all users of OSP services.[8]

Pursuant to the Commission's unblocking and branding requirements, sufficient competitive alternatives already exist to provide consumers with the information necessary to make informed judgments about OSPs. As the NPRM implicitly

---

[6] *Joint Explanatory Statement of the Committee on Conference*, S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 1 (1996).

[7] NPRM ¶ 8 n.22.

recognizes, consumers can and do use access codes to avoid a payphone's high-priced presubscribed OSP.[9] These "dial around" and related alternatives include 10XXX and "950" access code dialing, debit cards, and widely advertised OSP services such as 1-800-COLLECT and 1-800-CALL-ATT. The fact that carriers continue to invest large marketing resources in advertising campaigns devoted to access code dialing and "800" access services from aggregator locations makes clear that the marketplace has responded directly to the same consumer concerns (perceived or real) motivating the NPRM. Yet the Commission, in contrast, suggests in the NPRM that many callers who are "unwilling, unable or not readily able to use access codes are forced to pay high charges."[10] Whether or not this assumption is correct, a conclusion not supported by the small volume of recent OSP-related complaints, such a paternalistic approach to rate regulation appears designed to have the Commission save consumers from what it views as their own lethargy, or stupidity—plainly not legitimate goals of Commission action.

It is doubtful, in fact, that the Commission's proposed regulations will benefit those "unwilling, unable or not readily able" to use competitive alternatives to avoid paying excessive OSP charges. An individual who is "unwilling" to use an access code will be unlikely to change his or her behavior merely as a result of an announcement regarding rates. The Commission does not explain why a caller may be "unable or not readily able to use" access codes to avoid paying excessive OSP rates, and this

---

[8] Requiring disclosure announcements will burden consumers by requiring them to listen to the announcements and delaying their calling, while also paying higher charges to cover the costs for implementation of disclosure announcements.

[9] *Id.* ¶ 5.

[10] *Id.* ¶ 7.

conclusion appears inconsistent with the rapidly growing popularity of "800" OSP services and prepaid calling cards.[11] Indeed, as the Common Carrier Bureau has noted, prepaid calling cards are a viable alternative to OSP services that are "widely available . . . and are easy to use."[12] The NPRM also fails to recognize the value of marketplace forces themselves, under which callers surprised by higher than anticipated OSP charges naturally have a financial incentive to refrain from using the OSP again, placing real downward pressure on carriers' rates.[13]

In short, the Commission's existing aggregator unblocking and OSP branding requirements provide market-based incentives for consumers to "vote with their feet" (or dialing fingers). In light of the de-regulatory, pro-competitive policy framework established by Congress, coupled with the fact that Congress chose, presumably deliberately, not to revise or supplement TOCSIA in the landmark 1996 Act rewrite of the Communications Act, the Commission must be exceedingly wary of imposing new regulatory requirements that are not absolutely necessary to protect consumers. Accordingly, if the Commission elects to adopt any OSP rate "benchmarks," it should fashion a system that is reasonable, nondiscriminatory and neither burdensome nor misleading for consumers or OSPs.

---

[11] The Commission has previously recognized the growth and ease of use of dial around calls using 800 numbers and other access codes. *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, FCC 96-254, CC Docket No. 96-128 (released June 6, 1996) at ¶ 39.

[12] Federal Communications Commission, Common Carrier Bureau, *Common Carrier Competition*, Fall 1995 at 2.

[13] A possible benefit of additional disclosure requirements regarding call charges is that the caller will be aware of the charges for the call prior to the call. This, however, is of limited benefit in that a caller will know of the charge following the call as it will appear on a billing statement and use that knowledge to base his or her decision on whether to use an OSP in the future. In light of the wide availability and advertising of competitive alternatives, it is likely that the next time a caller places a call

(Continued on next page)

II. ANY BENCHMARK OSP RATES ESTABLISHED BY THE COMMISSION MUST BE BOTH REASONABLE AND NONDISCRIMINATORY

Cleartel/ConQuest concur with CompTel's comments in opposition to the Commission's rate benchmark and disclosure proposals. In addition to the legal arguments presented by CompTel, which demonstrate that the NPRM's disclosure/ benchmark approach exceeds the Commission's rate-setting powers under TOCSIA, Cleartel/ConQuest believe that any disclosure requirement based on the rates of the three largest OSPs is arbitrary and discriminatory. If the Commission elects to set an OSP rate benchmark, it should utilize the rates proposed by the CompTel Coalition, which appropriately reflect rates, and thus costs, prevailing in the OSP industry.

A. A Rate Benchmark Based on Rates of the Three Largest OSPs is Arbitrary and Discriminatory

The NPRM proposes a benchmark OSP rate, based on the rates of AT&T, MCI and Sprint, on the ground that these carriers' rates purportedly reflect "the reasonable expectations of consumers." NPRM ¶ 23. Even if consumer expectations were a permissible FCC ratemaking standard, the Commission's proposed benchmark is arbitrary and discriminatory, harming smaller OSPs whose rates (and costs) depart from the "big three" but whose pricing practices are otherwise entirely reasonable.

There is little doubt that a Commission rate "benchmark" is the functional equivalent of an FCC-prescribed OSP rate, even if the effect of exceeding the benchmark is only a trigger for rate-disclosure announcements. While setting a benchmark rate level for OSP rate disclosures is not *per se* ratemaking, it effectively establishes an

---

using a payphone he or she will consider the possibility of an excessive charge and make a *personal* choice whether to use an alternative calling method or risk incurring an excessive OSP charge.

industry-wide rate, because OSPs with rates exceeding this level will be driven to set rates at or below the benchmark level to avoid announcement burdens.[14]

Except for the CompTel Coalition proposal, the Commission does not have sufficient rate evidence in this docket to fashion a rate ceiling, because it lacks data on the average cost of providing OSP services. As the NPRM recognizes, there is considerable variance in the costs, economies of scale and operating margins of OSPs. Unless a Commission benchmark takes these variations into account—for instance, with a procedure permitting carriers to rebut the presumption of rate unreasonableness and to cost-justify rates in excess of the benchmark[15]—any rate ceiling based on AT&T, MCI and Sprint rates is purely arbitrary. These providers may carry the majority of OSP traffic today, but the NPRM fails to explain why their rates are a valid basis for a Commission rate cap, or why all higher OSP rates are necessarily unreasonable.

CompTel has explained why the "expectations of consumers" is an invalid standard for Commission ratesetting. But, even if the Commission could justify a rate benchmark on consumer expectations, the rate chosen by the Commission does not necessarily represent the expectations of the consumers that are complaining. First, the fact that most consumers use these three carriers does not mean that they expect to pay the same rates if they elect not to make an affirmative carrier selection from an

---

[14] The Commission recognizes that OSPs will have a real-world incentive to set rates at or below the benchmark by proposing two qualifications to the benchmark that would make it administratively easier for OSPs to comply with the 115% rate benchmark. NPRM ¶ 25.

[15] The CompTel Coalition "safe harbor" proposal took these concerns into account by crafting a "rate ceiling above which OSPs may not charge without submitting comprehensive cost justifications." CompTel Coalition Proposal, CC Docket No. 92-77, at 2 (March 16, 1995). The Commission's proposal for a permissible 15% "margin" above the average rates of AT&T, MCI and Sprint is consistent with this principle, but may not be sufficient to support the lawfulness of its proposed benchmark, because even carriers whose specific cost structures fully support higher rates would be precluded from charging such rates without complying with the disclosure requirements.

aggregator location. Indeed, it is more reasonable to assume that the majority of consumers (due to advertising by the "big three") are fully aware of the sometimes higher rates charged by other OSPs, and affirmatively choose to make OSP calls using the "default" presubscribed carrier for simple convenience. Second, although the NPRM suggests that consumers are used to paying rates equivalent to AT&T, MCI and Sprint from their home accounts,[16] there is no linkage between residential "1+" rates and "0+" rates from payphone and other aggregator locations. In essence, the Commission's choice of the three largest OSPs is an administrative shortcut lacking in rational public policy justification—an easily measurable, but entirely arbitrary, standard.

A benchmark rate based on the three largest carriers is also discriminatory. By definition, if a benchmark is based on the average OSP rates of AT&T, MCI and Sprint, these carriers will never be required to make a rate disclosure. Not only does this place an uneven cost burden on smaller OSPs, since only these "other" carriers will be required to bear the network expenses of implementing and maintaining a rate disclosure system, but it would "stigmatize" all carriers other than AT&T, MCI and Sprint for the traveling public. These carriers will never have to endure the negative customer perceptions associated with an announcement that one's rates are "too high."

Moreover, establishing a rate benchmark keyed to the three largest carriers creates a significant opportunity for anticompetitive pricing, under which the larger OSPs could reduce rates in order to artificially force their OSP competitors into a rate disclosure situation or to lose money by pricing below cost. AT&T, MCI and Sprint

[16] NPRM ¶ 23.

already exercise considerable "price leadership" in OSP services and commission levels; there is no reason to provide these carriers with more influence over rates by institutionalizing their collective market dominance with a formal Commission rule tied to their rate levels.[17]

At bottom, the Commission's proposal is discriminatory because it requires only carriers other than AT&T, MCI and Sprint to deal with these new OSP pricing rules and the consequences for deviating from an FCC-prescribed benchmark. The only way to avoid this consequence is to select a rate benchmark that accurately reflects predominant market rates for OSP services, not limited to these larger carriers, and to implement a rate disclosure requirement that applies to all OSPs. As discussed below, by making a rate-disclosure requirement universal, and by targeting it to provide real-world information of use to consumers, the Commission can make a useful contribution to consumer choice without stigmatizing smaller OSPs based on an arbitrary rate ceiling.

B. If the Commission Sets Benchmark OSP Rates, It Should Use Rates Based on the CompTel Coalition "Safe Harbor" Proposal

The "safe harbor" rate ceiling proposed by the CompTel Coalition would eliminate most customer complaints regarding OSP calling rates because the proposal was based on the rate levels that triggered rate-related informal complaints to the

[17] There is also nothing in the NPRM that would prevent the rate benchmarks from increasing, over time, based upon operator service price increases by the "big three" carriers. Indeed, in light of the fact that AT&T has increased its OSP rates significantly in the 16 months since the CompTel Coalition proposal was first submitted, the rate ceilings proposed by the CompTel Coalition are even more reasonable today.

Commission. This would appear to satisfy the Commission's stated objectives in this proceeding.

More significantly, the CompTel Coalition proposal is the only rate benchmark that reflects the widely varying costs of (and thus has the support of) the OSP industry. The CompTel Coalition ceiling avoids the inadequate ratemaking evidence and arbitrary aspects of a benchmark based on the rates of AT&T, MCI and Sprint because it is consistent with costs and revenues among a large cross-section of OSPs. It is nondiscriminatory, because the proposal would apply universally to *all* OSPs, regardless of size. And as explained by CompTel, the proposal is consistent with the Commission's ratesetting powers under TOCSIA.

The NPRM implicitly rejects the CompTel Coalition proposal for a "safe harbor" rebuttable presumption, but does not necessarily eliminate the possibility that the Commission would use the rate levels proposed by the CompTel Coalition as the trigger for any new OSP disclosure requirements. Indeed, the NPRM specifically asks for comment on whether "benchmarks set at . . . the level proposed by the CompTel Coalition" are justified. NPRM ¶ 24. Cleartel and ConQuest urge the Commission to adopt the CompTel Coalition rates if it chooses to use a benchmark/disclosure model. Although such rates may not satisfy the demands of all parties to this proceeding, they are reasonable, market-based levels that are consistent with the existing structure of the competitive OSP industry. Since the overall operator services marketplace is admittedly competitive,[18] due in no small part to the effect of the Commission's

[18] The Commission has reported to Congress under TOCSIA, 47 U.S.C. § 226(h)(3)(B) and (4), that "market forces are securing rates and charges that are just and reasonable."

unblocking and branding requirements, rates based on existing market prices are a far better approach to OSP ratesetting than an arbitrary standard, with no opportunity for carrier-specific pricing, based on only three OSPs.

III. ANY DISCLOSURE REQUIREMENT SHOULD BE UNIFORM FOR ALL OSPs AND SHOULD PROVIDE USEFUL, ACCURATE RATE INFORMATION TO CONSUMERS

In the NPRM, the Commission tentatively concluded that either of two disclosure alternatives—a "real-time" alternative and a "seven-minute" rate alternative—would be effective in achieving its stated goal of providing callers with an "opportunity to make informed choices in making operator service calls."[19] Neither of these alternatives maximizes consumer benefits, and each faces significant technical and cost disadvantages.

A variable, real-time rate disclosure system would be technically difficult for some OSPs and costly for all. The costs would of course be passed along to consumers. This alternative would inconvenience callers by delaying actual call processing, while the rate for a particular call was determined and an announcement played. A "seven-minute rate" disclosure system, while feasible and less costly, would substantially mislead customers, because OSP rates are so variable that an "average" rate for an "average" length call is not representative enough to provide the vast majority of consumers with accurate information.

---

[19] NPRM ¶ 35. These alternatives would (1) require OSPs to inform consumers of the total charges for which they would be liable for the initial rate period and each subsequent rate period ("real-time rate" alternative); or (2) require OSPs to disclose the highest amount it might charge the caller for a seven minute call ("seven-minute rate" alternative), *Id.*

The Commission should instead provide a rate disclosure that warns consumers, in neutral language, that OSP rates may differ from their "home" telephone rates, and provides a toll free number for consumers to call if *they are interested* in rate information. Such an approach is optimal because it does not place excessive burdens on consumers who are indifferent to OSP rates, while enabling those who are to easily access the information. Without misleading customers, such a disclosure requirement would further the Commission's traditional approach to OSP regulation—providing consumers with the opportunity to make informed carrier selection judgments, thus allowing competitive market forces for set OSP rate levels.

A. A Real-Time Rate Disclosure Requirement for All Calls Would be Cumbersome and Expensive in Light of the Wide Variations in OSP Rate Levels and Structures

An announcement system that provides variable prices in real time for "the initial rate period and each subsequent rate period," NPRM ¶ 35, would be difficult to develop and implement in light of the wide variations in OSP rate levels and structures. Speech synthesis capabilities are not currently included as part of many OSP announcement systems. More importantly, at any given time there may *be over a hundred different rate possibilities* based on the location of the calling and called parties and the time of day. This extreme variability in rates for specific calls makes real-time rate disclosure for OSPs problematic, and affirmatively misleading for consumers.[20]

[20] In more specialized, non-OSP markets such as inmate services, real-time rate disclosures are practical, as rates are more uniform by time and distance, premise-based CPE with sophisticated call processing capabilities (including speech synthesis) is deployed by carriers to each customer location, and carriers offer a small range of services that are customized for specific correctional institution customers.

To provide a relatively accurate announcement regarding the rate for a particular call, an OSP would need to establish and maintain a database that would contain area code ("NPA") and central office code ("NPA-NXX") combinations that could be accessed in real time to ascertain a rate for a particular call. Such a database might need to identify rates for over 175,000 different call scenarios.[21] To create and maintain such a database would be time-consuming and costly. Additionally, callers would be inconvenienced as call processing would need to be delayed while the OSP determined the rates for a particular call, then announced those rates to the caller. This delay is particularly noteworthy as it would occur after the caller dialed the number of the party he or she was calling.

While neither Cleartel or ConQuest has obtained cost estimates to develop such a system, it is likely that the implementation and maintenance costs are substantial. Furthermore, it is likely that the development and implementation of such an announcement system would take on the order of 12 to 18 months. In light of the technical challenges of implementing a "real-time rate" announcement system, the costs and time to develop such a system and the limited benefits to consumers, the Commission should not require disclosure announcements that provide "real-time rates."

---

[21] For example, to determine a particular rate in real time, announcement processing software could have available to it the NPAs of the calling and called party. Given that there are approximately 200 NPAs, three different time of day rates, and an initial and subsequent rate, the possible scenarios would number: 200 (the calling party NPA)*200 (the called party NPA)*3(the time of day factor)*2 (initial and subsequent rates) = 240,000. If the database used the NPA-NXX (which some OSPs use to calculate rates) of the calling and called party the number of rate possibilities would grow dramatically.

B. A Standard Disclosure of OSP Rates for a "Representative" Call Would Substantially Mislead Consumers

The NPRM proposes that carriers should disclose their "highest" charge for a seven-minute OSP call, on the basis that seven minutes is the average duration for an operator-assisted call from an aggregator location. NPRM ¶ 35. The Commission recognizes that this may mislead callers, so it gives the option to OSPs to announce their "average" seven-minute rate, if the OSP believes their "highest" rate would mislead callers. *Id.* Unfortunately, this blunderbuss approach would be so unrepresentative of most OSP calls that it would overstate typical OSP charges, drive customers from legitimate and reputable carriers such as Cleartel and ConQuest, and substantially mislead consumers. The Commission plainly should not prescribe any OSP disclosure requirement that misleads callers.

The drawbacks to the seven-minute rate alternative arise from the fact that, by definition, an average or highest rate quotation is inapplicable to the majority of OSP callers. It is likely that for over half of the callers a seven-minute "average" rate will exaggerate what they are likely to be charged, because their call durations will be less that seven minutes, while for less than half of the callers this rate will be less than what they incur.[22] In addition, significant differences between interstate and intrastate OSP rates would increase the degree of consumer confusion, especially in states (such as Virginia) that have fixed intrastate OSP rates.

[22] Indeed, for those callers making calls longer than seven minutes, the charge that they receive will likely be greater than what they expected, based on the rate disclosures, thereby exacerbating the situation and likely producing *more* complaints to the Commission and state regulators.

Indeed, for transient callers making a short duration call, it is likely that such an announcement would "scare" them away from using the OSP because the rate seems so high. Even if the announcement indicates the rate is for a seven minute call, it is unlikely that consumers will pay much attention to that portion of the announcement. Instead, all they will hear is a "very large-sounding" charge. Thus, rather than providing useful consumer information, these Commission-mandated rate disclosures would risk driving customers to an OSP's competitors, most likely a well-known member of the three "benchmark" OSPs. It is unlikely that the Commission desires this anticompetitive result, which is inconsistent with the Congressional policy underlying both TOCSIA and the Telecommunications Act of 1996. Consequently, because a standard, seven-minute rate disclosure will most certainly mislead consumers and have an anticompetitive impact, the Commission should not prescribe an announcement based on a single rate.

C. Any Commission-Prescribed Disclosure Should Require OSPs to Provide a Uniform, Neutral Disclaimer

Cleartel/ConQuest believe that the Commission can achieve its goal of providing consumers with additional rate-related information, while facilitating OSP competition, by fashioning a uniform, neutral disclaimer *all* OSPs would be required to provide if they exceeded the benchmark level. Under this approach, any OSP whose rates exceeded the CompTel Coalition benchmarks would be required to provide a warning "preamble"—similar to that crafted by the Commission for "900" pay-per-call services—which advises consumers that rates may differ from their residential interstate rates, and offers a toll-free number for rate information and rate quotes.

This approach achieves the Commission objective of giving callers the "opportunity to make informed choices in making operator service calls," and maximizes consumer benefits, without burdening OSP consumers that are uninterested in rate information. It is technically feasible with only minor modifications to existing OSP call-processing systems. And it provides accurate information to consumers without creating artificial, anticompetitive pressures in the OSP market.

Under this approach, an OSP that exceeded the benchmark rate would be required to play an announcement that provided a toll free number for consumers to ascertain the call charges. This approach is similar to that suggested by the American Public Communications Council ("APCC"), but with the enhancement that the toll-free number would be part of the announcement. The NPRM does not analyze the APCC suggestion, or a similar suggestion by the National Association of Attorney Generals ("NAAG"), but rather simply dismisses them by suggesting that the other alternatives were more effective.[23]

Cleartel and ConQuest urge the Commission to more closely examine this type of approach as we believe, with the right type of announcement, that it can be cost-effective and highly beneficial to consumers. Specifically, Cleartel and ConQuest propose if an OSP exceeds the rate benchmark, the Commission require the OSP to play an announcement providing a toll free number that a caller may dial to determine

---

[23] NPRM ¶ 35.

calling rates. We suggest the following announcement:

> "The rates for calls from this telephone may be different than rates you would pay from your home. If you would like to receive specific rate information before you place your call, please hang-up and dial 1-800-XXX-XXXX."

This announcement improves upon the one suggested by NAAG,[24] in that it is not anti-competitive in directing consumers to "their regular telephone company," and avoids NYNEX's concerns of placing burdens on directory assistance. Furthermore, it improves upon APCC's announcement by providing the 800 number in the announcement.

This approach is far more appropriate than the two alternatives the Commission is considering. As compared to the "real-time rate" alternative, this approach is much less costly to implement and will not impose delays on consumers not interested in obtaining rate information. The vast majority of callers do not complain about OSP rates and therefore are likely not to be interested in a real time rate for their call. The approach suggested here does not impose delays or the indirect costs associated with deployment of an announcement system on these callers. Furthermore, as compared to the "real-time rate" alternative, this approach can be implemented much more quickly because existing disclosure announcements can be simply enhanced to provide the additional message. As compared to the "seven-minute rate" approach this approach

---

[24] NAAG suggested the following announcement: "This may not be your regular telephone company and you may be charged more than your regular telephone charge for this call. To find out how to contact your regular telephone company, call 1-800-555-1212." APCC suggested the following announcement: "The rates charged by this provider exceed benchmarks established by the government. Check the information posted on or near the telephone for the toll-free number to obtain rate information before placing the call." NPRM ¶¶ 31-32.

will be less misleading to consumers and would not have the potential anti-competitive effects on competition in the OSP market.

Finally, the Cleartel/ConQuest proposal has the added advantage that it is carrier-neutral. In fact, the announcement could be implemented, without any regard for rate benchmarks, as a requirement for all OSPs, including AT&T, MCI and Sprint. By reminding consumers that OSP rates may differ from their residential rates, it would encourage consumers to utilize the rate information capabilities that OSPs have been required to make available, on request, since enactment of TOCSIA. Thus, a "neutral" announcement of the sort Cleartel/ConQuest propose can be implemented by the Commission as a requirement for all OSPs, whether or not the Commission adopts any rate ceilings or benchmarks. Because the "average" AT&T/MCI/Sprint benchmark proposed in the NPRM differs so substantially from the more reasonable CompTel Coalition rate ceilings, Cleartel/ConQuest submit that the Commission must make this carrier-neutral announcement applicable to all OSPs – *including AT&T, MCI and Sprint* – if it adopts the proposed benchmark.

CONCLUSION

If the Commission decides to set benchmark OSP rates and establish additional disclosure regulations, it should adopt benchmark rates, based on those suggested by the CompTel Coalition, and require a uniform, neutral disclaimer for all OSPs that exceed the benchmark. This approach will provide beneficial information to consumers, while avoiding unnecessary burdens on OSPs and their customers or detrimentally affecting competition in the OSP market.

Respectfully submitted,

By: _____

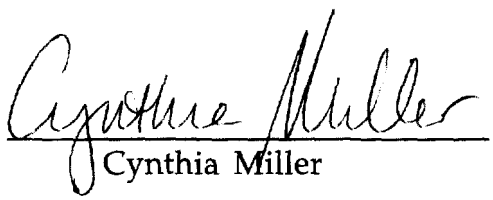
Glenn B. Manishin
Michael D. Specht, Senior Engineer
Blumenfeld & Cohen - Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
202.955.6300
202.955.6460 fax

Counsel for Cleartel Communications, Inc. and ConQuest Operator Services Corp.

Dated: July 17, 1996

CERTIFICATE OF SERVICE

I, Cynthia Miller, do hereby certify on this 17th day of July, 1996, that I have served a copy of the foregoing document via messenger to the parties below:



Cynthia Miller

Chairman Reed Hundt
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, NW
Room 802
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW
Room 832
Washington, DC 20554

Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street, NW
Room 844
Washington, DC 20554

International Transcription Services, Inc.
2100 M Street, NW
Suite 140
Washington, DC 20037

Enforcement Division
Common Carrier Bureau
Room 6008
2025 M Street, NW
Washington, DC 20037

Adrien Auger
Enforcement Division
Common Carrier Bureau
Room 6120
2025 M Street, NW
Washington, DC 20037

J.M. "Buddy"Phillips
Executive Director
Florida Sheriff's Association
PO Box 12519
Tallahassee, FL 32317-2519

Howard Porter
Director of Computing Services
Adams State College
Alamosa, CO 81102

Larry Moreland
SDN Users Association, Inc.
c/o Caterpillar, Inc.
600 W. Washington Street, AD3H
East Peoria, IL 61630

Patrick A. Lee
NYNEX
120 Bloomingdale Road
White Plains, NY 10605

John A. Ligon
Comptel Computer Corporation
128 Mount Hebron Avenue
Post Office Box 880
Upper Montclair, NJ 07043

Aileen Adams
Director
Office for Victims of Crime
U.S. Department of Justice
633 Indiana Avenue, NW
Washington, DC 20531

Danny E. Adams
Edward A. Yorkgetis, Jr.
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Edward C. Addison, Director
Division of Communications
Virginia State Corporation Commission
PO Box 1197
Richmond, VA 23209

Capt. Rick Adkins, Division Commander
Shasta County Sheriff's Department
Main Jail Facility
1655 West Street
Redding, CA 96001

Nanci Adler
Technologies Management, Inc.
163 E. Morse Blvd., Suite 300
PO Drawer 200
Winter Park, FL 32790

Veronica M. Ahern
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, NW
Suite 800
Washington, DC 20005

Robert F. Aldrich
Keck, Mahin & Cate
1201 New York Avneue, NW
Washington, DC 20005-3919

Howard B. Alfred, Sheriff
Henderson County
Athens, Texas 75751

Mark J. Angell
Vice President
Universal Technology & Communications Corporation
10940 Laureate Drive, Suite 8300
San Antonio, TX 78249-3343

Rick L. Anthony
Quest Communications Corporation
8829 Bond Street
Shawnee Mission, KS 66214-1707

C.M. Armour
President
Southwest Georgia Regional Airport
3905 Newton Road
Albany, GA 31707

W. Audie Long
US Long Distance, Inc.
9311 San Pedro, Suite 300
San Antonio, TX 78216

William B. Barfield
Bellsouth Telecommunications, Inc.
1155 Peachtree Street, NE, Suite 1800
Atlanta, GA 30367-6000

Capt. Robert W. Baker
Jail Administrator
Office of the Sheriff
25 W. Walton Avenue
Muskegon, MI 49442

Charles M. Barclay, President
American Association of Airport Executives
4212 King Street
Alexandria, VA 22302

William E. Barr
Administrative Services Supervisor
Occidental College
1600 Campus Road
Los Angeles, CA 90041-3314

Krys T. Bart
Assistant Director
City of Fresno
2401 N. Ashley Way
Fresno, CA 93727

William M. Barvick
240 East High Street, #202
Jefferson, MO 65101

William D. Baskett III
Frost & Jacobs
2500 PNC Center
201 East Fifth Street
Cincinnati, OH 45202

Stanley F. Bates
Assistant Director
Arizona Department of Corrections
1601 W. Jefferson Street
Phoeniz, AZ 85007-3003

Michael L. Baughn
Captain, Chief Deputy
Thomas County Sheriff's Office
225 North Court
Colby, KS 67701

Martin W. Bercovici
Keller & Heckman
1001 G Street, NW, Suite 500 West
Washington, DC 20001

Debra Berlyn
Ronald J. Binz
NASUCA
1133 15th Street, NW, Suite 575
Washington, DC 20005

Paul J. Berman
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20044-7566

Francine J. Berry
AT&T
295 North Maple Avenue
Room 3244J1
Basking Ridge, NJ 07920

Paul C. Besozzi
Besozzi & Gavin
1901 L Street, NW, Suite 200
Washington, DC 20036

John M. Bisinger
Sr. Vice President
AHA TelePLAN
515 North State St., Suite 2850
Chicago, IL 60610

Pamela J. Brandon
Division Administrator
Wisconsin Department of Corrections
149 E. Wilson Street, PO Box 7925
Madison, WI 53707

Mitchell F. Brecher
Donelan, Cleary, Wood & Maser, P.C.
1275 K Street, NW, Suite 850
Washington, DC 20005

Douglas F. Brent
Associate Counsel
LDDS Communications, Inc.
9300 Shelbyville Road, Suite 700
Louisville, Kentucky 40222

Marie T. Breslin
Director
FCC Relations
Bell Atlantic Network Services, Inc.
1133 20th Street, NW, Suite 800
Washington, DC 20036

Harold Brown
President
SC Jail Administrators Association
PO Box 4046
Anderson, SC 29622

G.C. "Buck" Buchanan, Sheriff
Yavapai County Sheriffs Office
255 East Gurley Street
Prescott, AZ 86301

Monique Byrnes
Technologies Management, Inc.
PO Drawer 200
Winter Park, FL 32790

Lawrence C. Lesza
Director of Corrections
Lake County Sheriff's Department
20 South County Street
Waukegan, IL 60085

Richard Cagle
Jail Administrator
Swisher County Sheriff's Office
136 E. Broadway
Tulia, TX 79088

Greg Casey
International Telecharge, Inc.
6707 Democracy Boulevard
Bethesda, MD 20817

John W. Priest, Chairman & CEO
Teltronics, Inc.
2150 Whitfield Industrial Way
Sarasota, FL 34243-4046

Cheryl L. Parrino, Chairman
Public Service Commission of Wisconsin
4802 Sheboygan Avenue
PO Box 7854
Madison, WI 53707

Al Chandler
Assistant Director/Institutions
Oregon Department of Corrections
2575 Center Street
Salem, OR 97310

Earl Charnick, Warden
Somerset County, Marland Correctional
Administrators Association
30474 Rebells Net Road
Westover, MD 21871

Ronald G. Choura
Telecommunications Section
Policy Division
Michigan Public Service Commission
PO Box 30221
Lansing, MI 48909-7721

George A. Christenberry, Jr.
Deputy Commissioner, State of Georgia
Department of Administrative Services
Telecommunications Division
200 Piedmont Avenue, Suite 1402
Atlanta, GA 30334-5540

W. Dewey Clower
National Association of Truck Stoppers
1199 North Fairfax Street, Suite 801
Alexandria, VA 22314

David Cosson
NTCA
2626 Pennsylvania Avenue, NW
Washington, DC 20037

Thomas A. Coughlin III
Commissioner
State of NY
Dept. of Correctional Services
The State Office Building Campus
Albany, NY 12226

Ellyn Elise Crutcher
Consolidated Companies
121 S. 17th Street
Mattoon, IL 61938

Andrew D. Lipman
Swidler & Berlin, Chartered
3000 K Street, NW, Suite 300
Washington, DC 20007

Colleen M. Dale
Deputy General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65201

James Danley
Sheriff, Greene County
205 S 3 1/2 Street
Paragould, AR 72450

W. Scott Deaver
Vice President Marketing
Ramada Franchise Systems, Inc.
339 Jefferson Road, PO Box 278
Parsippany, NJ 07054

George A. Vose, Jr., Director
R.I. Department of Corrections
40 Howard Avenue
Cranston, RI 02920

Robert N. Broadbent, Director
Clark County, Department of Aviation
McCarren International Airport
PO Box 11005
Las Vegas, NV 89111

James F. Dodd
Smith, Gill, Fisher & Butts
One Kansas City Place
1200 Main Street
Kansas City, MO 64105

James B. Dransfield
Director, Telecommunications
Duke University
Durham, NC 27706